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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Written statement submitted by the Transnational Radical Party, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[7 March 1997]

1. At its fifty-second session the United Nations Commission on Human Rights adopted resolution 1996/6 in which it decided to follow the developments of the situation in Western Sahara and to consider the question at its fifty-third session under item 7 of the provisional agenda as a matter of high priority. This organization considers this issue to be one of the greatest importance. In fact, during the fifty-second session of the Commission, the Transnational Radical Party joined other organizations in a major conference at the Palais des Nations on the question of self-determination, and specifically on the cases of Western Sahara, East Timor and Tibet. This conference was organized in cooperation with the National Council of Maubere Resistance, the Tibetan government in exile, the Polisario Front and the Unrepresented Nations and Peoples Organization.

2. The outcome of the conference referred to above, contained in a report, "The question of self-determination: The cases of East Timor, Tibet and Western Sahara" (25-26 March 1996) could be useful to the debate of the Commission. The conference examined the basis and meaning of the right to self-determination as it applies specifically to these three concrete situations. It explored the relationship between human rights violations and

self-determination, and assessed the impact of population transfer policies on the exercise of self-determination. It also looked at the proposals and prospects for responding to the claims for self-determination of East Timor, Tibet and Western Sahara and for resolving the conflicts that exist in those areas today. Participants included 1996 Nobel laureate Jose Ramos Horta, Mr. J.M. Mukhi, former Legal Adviser to the Ministry of External Affairs of India, and Senator Michael O'Kennedy, former Minister for Foreign Affairs of Ireland.

3. Essentially, the right to self-determination is the right of peoples to determine their own destiny. In particular, the right allows a people to choose its own political status and to determine its own form of economic, cultural and social development, free of outside interference. This interpretation of the right to self-determination corresponds to the United Nations instruments and resolutions, including article 1 common to the two International Covenants on Human Rights. The exercise of this right can result in a variety of different outcomes ranging from political independence to forms of autonomy or association to full integration within a State. The importance lies in the right of choice, so that the outcome of a people's choice should not affect the existence of the right to make a choice. In practice, the possible outcome of an exercise of self-determination will often determine the attitude of Governments towards the actual claim by a people or nation. Nevertheless, the right to self-determination is recognized in international law as a right of process (not of outcome) belonging to peoples and not to States or Governments.

4. Understood in this way, the right to self-determination remains an ongoing choice of the people as to their governance, and their economic, social and cultural development. It is a constant entitlement. The concepts of self-determination and democracy are closely related, since both emphasize the right of people to choose the form and identity of their Government. However, democracy as this is practised according to the Western model does not necessarily satisfy the requirements for the implementation of self-determination. Where democracy is defined as the rule of the majority and the people claiming the right to self-determination constitute a numerical minority in the State in question, a democratic system does not necessarily respond to the needs of the minority peoples.

5. Pursuant to the Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, the realization of the right to self-determination "shall not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples ... and thus possessed of a Government representing the whole people belonging to the territory without distinction" as to race, creed or colour. The same principle was adopted by consensus and was included in the final Declaration of the World Conference on Human Rights held in Vienna in June 1993. The apparent tension between the principles of territorial integrity of States and of self-determination of peoples is, therefore, resolved on the basis of the conduct of the States in question. States, or more accurately their Governments, that do represent the interests

of all the peoples within their borders, can invoke the principle of territorial integrity. Those that do not represent the interests of their constituent peoples but, instead, oppress them and violate their rights, cannot invoke that principle in response to a claim for self-determination. In cases of colonial or alien domination and of occupation of territory the dominated or occupied people always has the right to exercise self-determination.

6. The conference referred to above concluded that East Timor, Tibet and Western Sahara each possess the right to self-determination. Each of the cases, though different, is a strong case of a people which has and continues to be denied its right to self-determination. In the case of Tibet, it was agreed that Tibetans are indisputably a people: they possess a distinct language, religion, culture, traditions and customs, a history as a separate State and a well-defined territory. It was demonstrated that policies have been instituted, including population transfer, intended to destroy the Tibetans as a distinct people with their own national and cultural heritage. This constitutes a violation of the right to self-determination. This has also been recognized by the United Nations in a number of resolutions (e.g. 1723 (XVI) of 20 December 1961 and 2079 (XX) of 18 December 1965 and resolution 1991/10 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities).

7. East Timor and Western Sahara both were subjected to "salt-water" colonialism by Portugal and Spain, respectively, before being occupied by Indonesia and Morocco. Both territories are on the agenda of the United Nations Decolonization Committee. In both cases the United Nations has recognized its responsibility and has been involved in attempts to negotiate an end to the occupation and an implementation of the right to self-determination.

8. Even though the United Nations has been seized with respect to all three cases, it has been ineffective in securing the right of the respective peoples to self-determination. The United Nations Commission on Human Rights should analyse the causes of this ineffectiveness as well as the consequences this has on the lack of respect for other fundamental human rights of the people concerned.

9. The Indonesian invasion and occupation of East Timor violated two fundamental norms of international law: it deprived East Timor of its right to self-determination and it constituted an act of aggression. The General Assembly and the Security Council have both recognized the right to self-determination of the Timorese people and have called upon Indonesia to withdraw its forces from the territory. Professor Richard Falk (Albert Milbank Professor of International Law, Princeton University) reminded the conference that Indonesia has, in fact, accepted the application of the principle of self-determination to the territory of East Timor. It has even entered into negotiations about its application with Portugal in United Nations-sponsored negotiations.

10. The same applies to Western Sahara: the Moroccan invasion and occupation of Western Sahara deprived the Saharawi people of its right to self-determination and also constituted an act of aggression. The

General Assembly recognized the inalienable right to self-determination of Western Sahara in 1965, and decided upon a referendum as the appropriate method to implement this right. In 1979, it recognized the Polisario Front as the accepted representative of the people of Western Sahara. The General Assembly has repeatedly reaffirmed the responsibility of the United Nations to ameliorate this situation and has offered the people of Western Sahara an international guarantee for the respect of their will. This position has been reinforced by the International Court of Justice which has reaffirmed, through an Advisory Opinion (3 January 1975), that the people of Western Sahara possess the requisite factors to invoke their right to self-determination. The United Nations has obtained the agreement of the parties on the method for the implementation of the right to self-determination: a referendum. This has, however, been undermined by an active policy of population transfer.

11. In the cases of both East Timor and Western Sahara, the occupying Powers have prevented the full decolonization of the territories in question. A parallel can be drawn also with the situation of Tibet, except that this country was never colonized before 1951. In all three cases, international law has been and continues to be violated. International law imposes the duty on States not to recognize situations created in violation of international law and to act to uphold that law. This many States members of the United Nations have failed to do, thus undermining the international system of rule of law, instead succumbing to the short-term advantages of political or economic expediency.

12. This inability or refusal of States, including major Powers, to insist upon compliance with international law, including the right to self-determination, in the cases of East Timor, Tibet and Western Sahara has deepened the suffering to which the Timorese, Saharawi and Tibetan people have been subjected.

13. In each of these cases, the leaders of the occupied peoples have proposed a process of accommodation and reconciliation which provides for a phased approach to implementation of self-determination. International law provides not only for the exercise of self-determination as an outcome, but also provides the basis for a process for its realization which can lead, over time, to the desired outcome. It is noted that this sense of realism is reflected in the Timorese Peace Initiative (1992), the Five Point Peace Plan of H.H. the Dalai Lama (1989) and the 1991 Peace Plan for Western Sahara.

14. The United Nations Commission on Human Rights can encourage and endorse efforts being made towards a peaceful resolution of conflicts originating out of these claims to self-determination. It can call on the Secretary-General to offer his good offices or to intensify his efforts where his good offices have not led to the desired result. For the Commission to maintain silence on these three cases is an impermissible abdication of its responsibilities in the field of human rights, in particular in respect to agenda item 7, dealing with the human right of self-determination.